

117TH CONGRESS  
1ST SESSION

# S. 1123

To preserve non-interference under the Medicare part D Prescription Drug Benefit program.

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IN THE SENATE OF THE UNITED STATES

APRIL 14, 2021

Mrs. BLACKBURN introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To preserve non-interference under the Medicare part D Prescription Drug Benefit program.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

**3 SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Preserving Innovation  
5       for the Next Generation Act” or the “PING Act”.

**6 SEC. 2. FINDINGS.**

7       Congress makes the following findings:

8           (1) Since implementation, the Medicare Pre-  
9           scription Drug Benefit program under part D of  
10          title XVIII of the Social Security Act (42 U.S.C.

1       1395w–101 et seq.) (referred to in this section as  
2       “Medicare part D”) has succeeded beyond expecta-  
3       tions in providing affordable prescription drug cov-  
4       erage for more than 45,000,000 seniors and disabled  
5       individuals.

6                 (2) The competitive market has kept total  
7       Medicare part D costs below original estimates,  
8       while still offering beneficiaries steady premiums and  
9       a variety of alternative formularies and benefit de-  
10      sign.

11                 (3) This competitive pricing structure works, in  
12      large part, due to the “non-interference clause”  
13      under Medicare part D which provides for robust  
14      private market negotiation without undue govern-  
15      ment interference.

16                 (4) The Congressional Budget Office repeatedly  
17      has said that government negotiation would have a  
18      negligible impact on Medicare part D spending un-  
19      less the government also restricted access to medica-  
20      tions.

21                 (5) To achieve any significant savings, the gov-  
22      ernment would need to impose access or coverage re-  
23      strictions on medications. In fact, limiting options  
24      will likely result in costs shifting to higher spending  
25      for other Medicare services and negatively impact

1 the health of seniors without helping to reduce gov-  
2 ernment spending.

3 (6) Having a broad range of treatment options  
4 is fundamental to providing good care to all pa-  
5 tients, but particularly so for the Medicare popu-  
6 lation, who are more likely to be affected by multiple  
7 chronic conditions. With the advent of personalized  
8 medicines and targeted therapies—where the under-  
9 lying molecular drivers of disease help identify and  
10 direct precise, targeted treatment choices—limiting  
11 access reduces the vast potential of breakthrough  
12 science to revolutionize care. Therefore, it is impera-  
13 tive to ensure beneficiaries have access to a broader  
14 range of medicines to best meet their health needs.

15 (7) Medicare beneficiaries would not be better  
16 off if Medicare part D drug coverage were adminis-  
17 tered by the Federal Government in the same way  
18 as the Veterans Administration. Many veterans rely  
19 on other sources to supplement their Veterans Ad-  
20 ministration drug coverage due to restrictions that  
21 limit their access to needed medications. More than  
22 half of all veterans supplement their Veterans Ad-  
23 ministration benefits with other sources of drug cov-  
24 erage, including Medicare part D. A recent Veterans  
25 Administration survey shows that approximately

1       80.4 percent of veterans had both Veterans Adminis-  
2       tration and non-Veterans Administration health cov-  
3       erage and, among those in Medicare, 33.2 percent  
4       have Medicare part D for prescription drug cov-  
5       erage.

6                 (8) Imposing a restrictive Veterans Administra-  
7       tion-type formulary on Medicare part D is unlikely  
8       to work for the diverse group of more than  
9       45,000,000 beneficiaries enrolled in Medicare part  
10      D. Evidence show that seniors would have limited  
11      choices and fewer medicines available to them. A re-  
12      cent analysis by Xcenda found that of the top 200  
13      part D brand name drugs, 74 percent or more were  
14      covered across stand-alone prescription drug plans  
15      and Medicare Advantage prescription drug plans,  
16      compared with 52 percent that could be covered by  
17      the Veterans Administration formulary.

18                 (9) A national formulary would restrict access  
19       to affordable and vital prescriptions many Medicare  
20       beneficiaries rely on. Robust patient access to a full  
21       range of medicines has been a cornerstone of Medi-  
22       care part D. Restricting access to medicines can sig-  
23       nificantly reduce adherence. Poorer medication ad-  
24       herence, in turn, can lead to worse health outcomes  
25       and higher overall spending.

1                         (10) Price controls or large penalties to force  
2 companies to comply with so-called “negotiations”  
3 have resulted in restricted access abroad and threat-  
4 en similar restrictions on access in the United  
5 States. Research demonstrates that government  
6 price setting reduces access for patients and results  
7 in fewer or delayed treatment options—nearly 90  
8 percent of new medicines launched globally in the  
9 past decade are currently available to patients in the  
10 United States, only about half are available to pa-  
11 tients in other countries like France and Canada.

12                         (11) Limiting patient access to medicines con-  
13 tradicts the foundational principles of Medicare part  
14 D and the value beneficiaries derive from the pro-  
15 gram—a recent survey shows that more than 90  
16 percent of Medicare beneficiaries are satisfied with  
17 their drug coverage and more than 80 percent said  
18 it is important to them to have a variety of prescrip-  
19 tion drug plans under Medicare part D from which  
20 to choose.

21 **SEC. 3. SENSE OF THE SENATE.**

22                         It is the sense of the Senate that non-interference in  
23 the Medicare part D Prescription Drug Benefit program  
24 under section 1860D–11(i) of the Social Security Act (42  
25 U.S.C. 1395w–111(i)) should not be repealed.

1   **SEC. 4. PROHIBITION ON CMI TESTING OF MODELS THAT**

2                   **WOULD REPEAL NONINTERFERENCE.**

3       Section 1115A(b) of the Social Security Act (42

4 U.S.C. 1315a(b)) is amended by adding at the end the

5 following new paragraph:

6                 “(5) PROHIBITION ON TESTING OF MODELS

7                 THAT WOULD REPEAL NONINTERFERENCE.—The

8       CMI shall not test any model that would repeal or

9       require a waiver of section 1860D–11(i).”.

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